IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

ORDER

Nand Kishore Vs. Smt. Bhagwati & ors.

S.B.CR. MISC. PETITION NO. 1362/2005.

Under Sec.482 Cr.P.C. against the order dated 1.8.2005 passed by Additional Chief Judicial Magistrate No.3, Bikaner in Original Misc. Case No. 496/2004.

Date of Order: September 12, 2006.

PRESENT

HON'BLE MR JUSTICE H.R.PANWAR

Mr HS Shrimalee, for the petitioner.
Mr Iqbal Sherani,for non petitioner.

BY THE COURT:

By the instant Cr. Misc. Petition under Section 482 Cr.P.C., the petitioner has challenged the order dated 1st August, 2005 passed by Additional Chief Judicial Magistrate No.3, Bikaner (for short `the trial Court' hereinafter) whereby the trial Court, during pendency of the application filed by the non -petitioner under Sec.125 Cr.P.C., granted monthly interim maintenance at the rate of 1,000/- per month in favour of non petitioner No.1

and Rs. 250/- each in favour of non petitioner Nos. 2 to 5 from the date of application i.e. 20.8.2004. The petition against non petitioners No. 2 to 5 was dismissed on 4.1.2006 by a co-ordinate Bench of this Court.

I have heard the learned counsel for the parties and perused the order impugned.

It is contended by learned counsel for the petitioner that from the evidence of the petitioner before the trial Court along with the reply to the application under Section 125 Cr.P.C., it is clear that non petitioner No.1 is living in adultery and there is statement in some other proceedings wherein non- petitioner also stated that she is living in adultery. It is also contended that the petitioner is a taxi driver and at any rate, he cannot have such an income to pay the maintenance awarded by the trial court.

On the other hand, learned counsel appearing for non-petitioner submits that on the ground that non petitioner is living in adultery, she cannot be denied interim maintenance. He has relied on a decision of the Punjab & Haryana High Court in Jagir Singh Vs. Jasbir Kaur & ors., I (2005) DMC 439 wherein it has been held that interim maintenance cannot be denied on the

ground of adultery to wife.

I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. The parties are yet to lead their evidence before the trial Court including the evidence whether the non petitioner No.1 is living in adultery or not and also with regard to income of the petitioner.

Keeping in view the admitted fact that the petitioner is a taxi-driver, in my view, being a taxi driver, it is not possible for the petitioner to pay a sum of Rs. 2,000/- per month as interim maintenance. However, in the circumstances, maintenance of Rs. 250/- per month granted to non petitioners No. 2 to 5 cannot be said to be on higher side. Taking into account overall facts and circumstances, the order granting maintenance of Rs. 1,000/- in favour of non petitioner No.1 appears to be on higher side and therefore, the same deserves to be modified.

In the result, the instant Cr. Misc. Petition against non petitioner No.1 is partly allowed. The order impugned granting interim maintenance in favour of non petitioner No.1 is modified to the extent that the petitioner shall pay a sum of Rs.500/- per month to the non petitioner No.1 instead of Rs. 1,000/-.

However, the order impugned granting interim maintenance in favour of non -petitioners No. 2 to 5 is maintained. The trial Court shall decide the main application filed by the non -petitioner No.1 utmost expeditiously, preferably within a period of four months from the date of receipt of a certified copy of this order.

(H.R.PANWAR),J.

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